

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

TYSON FOODS, INC., et al,)

Defendants.)

4:05-CV-00329-TCK-SAJ

VOLUME I OF THE VIDEOTAPED
DEPOSITION OF MICHAEL DICKS, PhD, produced as a
witness on behalf of the Plaintiff in the above
styled and numbered cause, taken on the 13th day of
February, 2009, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

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918-587-2878

EXHIBIT

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1 phosphorus is needed in the Illinois River
2 watershed?

3 A I don't believe there's a statement that says
4 that, but I believe what the article states is that
5 phosphorus is still needed in the watershed for
6 agricultural production activities.

09:48AM

7 Q Let me ask you, sir, do you agree it's well
8 known in the scientific community and expressed in
9 published literature that constituents of poultry
10 waste run off from fields from where it's been land
11 applied?

09:48AM

12 MR. BURNS: Object to form.

13 A I'm sorry?

14 Q Do you agree that it's well known in the
15 scientific community and expressed in published
16 literature that constituents of poultry waste runs
17 off from fields where it's been land applied?

09:49AM

18 A Yes, sir.

19 Q Do you agree with the statement that it has
20 become cheaper to control nutrient sources than to
21 treat the symptoms of nutrient enrichment?

09:49AM

22 MR. ELROD: Can we -- can you ask that
23 again? That train whistle is driving me crazy. I
24 thought Kathy Taylor was supposed to do something
25 about that.

09:49AM

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1 Q Okay. Have you read any of the studies that
2 are listed in the far right column of this Table 7
3 at Page 25?

4 A I don't believe so.

5 Q Are you aware of any other reports not shown 09:57AM
6 here which provide similar conclusions for the
7 Illinois River watershed?

8 A No.

9 Q Let me ask you this, sir: Is it your opinion
10 that none of the waste or its constituents from the 09:57AM
11 approximately 345,000 tons of poultry waste, which
12 is land applied annually in the IRW, will not run
13 off into the water?

14 MR. BURNS: Object to form.

15 A One more time, please. 09:57AM

16 Q Is it your opinion that none of the waste or
17 its constituents from the approximately 345,000 tons
18 of poultry waste, which is land applied annually in
19 the IRW, will not run off into the water?

20 MR. BURNS: Object to form. 09:58AM

21 A No, sir.

22 Q Was your knowledge of that fact that I just
23 stated to you --

24 MR. ELROD: Somebody is trying to break in
25 on the 40th floor. 09:58AM

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1 Q Okay. Do you know in fact that broilers are
2 being grown to six pounds?

3 A I don't know that.

4 Q Did you know that in your calculations that
5 you used six-pound birds?

11:37AM

6 A I don't recall, no, sir.

7 Q We talked earlier about vertical integration.
8 Do you agree that each of the defendants in this
9 case are a vertically integrated poultry operation?

10 A It's my understanding, yes, sir.

11:38AM

11 Q Okay. Page 7 of your report, in -- I believe
12 you said -- looking at the Page 7 of your report
13 where we had your summary of conclusions, the first
14 opinion says, vertical integration in the broiler
15 industry has evolved as a means to reduce risk and
16 has produced significant benefits for growers,
17 integrators and consumers. Is that statement
18 intended to be a general statement because it
19 doesn't reference the Illinois River watershed?

11:39AM

20 A That's correct.

11:39AM

21 Q So it is a general statement?

22 A That's correct.

23 Q Okay. Is it intended to apply to the growers,
24 integrators and consumers for the Illinois River
25 watershed as well?

11:40AM

1 MR. BURNS: Object to form.

2 A Yes.

3 Q Do you also agree that each defendants' choice
4 is based in part on the location of the grower in
5 relation to the feed mills, hatchery or processing 11:42AM
6 plants of that defendant?

7 A Yes.

8 Q Do you agree that each defendant controls the
9 number of growers it will have in a region or
10 complex? 11:42AM

11 A Yes.

12 Q And do you agree then as a result of that,
13 each defendant controls the density of the growers
14 it will have in an area or region or it's sometimes
15 referred to as complex? 11:43AM

16 MR. BURNS: Object to form.

17 A Yes. Certainly they would exhibit a certain
18 percent of that control, correct.

19 Q Why a percentage?

20 A Well, it takes two to sign a contract. 11:43AM

21 Q Okay, but the author of the contract is made
22 from the integrator, is it not?

23 A That's correct.

24 Q And so they choose a person to give an offer
25 to; is that correct? 11:43AM

1 A Correct.

2 Q Would you agree with me each defendant
3 controls when and how many birds are to be grown by
4 their growers?

5 A Correct. 11:43AM

6 Q Would you agree that each defendant integrator
7 sets the schedule for when birds are in or out of
8 the growers' houses?

9 A Yes.

10 Q And do you agree with me that each defendant 11:43AM

11 controls the type and size of birds in the grower --
12 I'm sorry, I'll restate that. Do you agree with me
13 that each defendant controls the type and size of
14 birds that growers will grow for that integrator
15 defendant? 11:43AM

16 A State that again.

17 Q Would you agree that each defendant controls
18 the type and size of birds the growers will grow for
19 them?

20 A Well, you know, I guess my problem is with 11:44AM
21 your word control because do they -- do they -- you
22 know, do they guide it? Yes. Obviously they don't
23 have any control over what the producers do in terms
24 of the actual production. Do you follow me?

25 Q Let me clarify my question then. 11:44AM

1 Q All right. Would you agree with me that each
2 defendant controls the formula and supply of all the
3 feed that's used by all of the growers?

4 A Correct.

5 Q And would you agree that each defendant 11:45AM
6 controls the specification for housing and equipment
7 to be used in growing the birds?

8 A Yes.

9 Q Would you agree that each defendant integrator
10 controls all the medical and veterinarian supplies 11:45AM
11 and services that will be used by the growers?

12 MR. BURNS: Object to form.

13 A I'm not certain of that. I'm not certain of
14 that detail, what the contract states in that in
15 every case. 11:45AM

16 Q Okay. Do you know of any contract growers
17 that provide their own veterinary services to the
18 birds that are grown?

19 A I do not.

20 Q Do you know of any contract grower that 11:46AM
21 supplies its own veterinarian supplies for treatment
22 of the birds?

23 A I do not.

24 Q Do you agree with me each defendant provides
25 routine inspections and furnishes advice or 11:46AM

1 instruction by the integrator representatives to
2 assure quality of the product?

3 MR. BURNS: Object to form.

4 A Say it again. Sorry.

5 Q You're familiar with service techs that 11:46AM
6 integrators use?

7 A Right, yes, sir.

8 Q And you're familiar that they go out on a
9 regular basis, weekly, sometimes more or less,
10 correct, go out to the farms? 11:46AM

11 A Yes, sir.

12 Q And do you agree with me that the defendants,
13 in providing these routine inspections, that they
14 will furnish advice and instruction to the growers
15 on how to grow their birds? 11:46AM

16 MR. BURNS: Object to form.

17 A Let me see how I can answer that. I think
18 that's generally the case. I'm not sure that in
19 talking to the producers, that that happens on a
20 weekly basis or biweekly basis or even a monthly 11:46AM
21 basis. Is that written to be a typical practice,
22 yes. Does that help you?

23 Q Yeah. Well, I've deposed several growers in
24 this case and not a one of them told me they didn't
25 come out on a very regular basis, sometimes weekly 11:47AM

1 A Correct.

2 Q And you have not undertaken any scientific
3 studies, survey or investigation of owners in the
4 IRW who own pastureland who refuse to use poultry
5 waste on their land and how many acres that
6 represents?

02:51PM

7 A Correct.

8 Q And you agree that historically the
9 predominant use of poultry litter has been to land
10 apply it in the IRW?

02:51PM

11 A Yes.

12 MR. BURNS: Object to the form.

13 Q Would you agree that poultry farmers generally
14 would apply it on their land or nearby neighbors'
15 land when they do?

02:51PM

16 MR. BURNS: Object to form.

17 A I don't think I could stipulate that.

18 Q Do you believe or agree that generally the
19 same land is used for application each year?

20 MR. BURNS: Object to form.

02:51PM

21 A I don't -- past or present?

22 Q Past.

23 A That's -- that may be true. I don't have any
24 -- I don't have any knowledge of that.

25 Q Let me hand you what's been marked as Exhibit

02:51PM

1 you've not spoken to John Everett, who is a special
2 master in Eucha-Spavinaw watershed issues; is that
3 correct?

4 A That's correct.

5 Q Explain, if you would, how you are accounting 04:09PM
6 for any other source of phosphorus in the watershed
7 in your estimate or analysis.

8 A I'm not. We only did poultry litter.

9 Q Is it your professional opinion there are no
10 other sources of phosphorus in the IRW pasturelands? 04:10PM

11 A No.

12 Q What did you do to determine, validate
13 existence of other sources of phosphorus?

14 A Nothing.

15 Q Is it your opinion that all other sources of 04:10PM
16 phosphorus contribution to the watershed are
17 insignificant?

18 A No.

19 Q Can you tell me what other source of
20 phosphorus you considered to be significant besides 04:10PM
21 poultry waste?

22 A Cattle, swine, human sewage, chemical
23 fertilizer used in urban areas.

24 MR. ELROD: Are you talking about land,
25 pastureland or just in the watershed? 04:10PM

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